IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLN. NO. 93 of 2006

Sangli Miraj and Kupwad Cities
Municipal Corporation .. Petitioner

versus

Sadanand Devidas Kamath & ors. .. Respondents

...

Mr. G.H. Keluskar for the petitioner.

Mr.R.G. Ketkar for the respondent.

CORAM : D.G. KARNIK, J

DATED : 5th December 2006

P.C.:

1. Heard both sides.

2. This revision application is directed against the order dated 16th January 2006 passed by the Civil Judge, Junior Division, Miraj holding that it had the jurisdiction to entertain and try the suit.

3. The respondent is the owner of the suit property. The suit land was reserved for a vegetable market in the development plan in the year 1986. As the land was not acquired by the municipal corporation he gave a notice dated 12th February 1996 to the petitioner calling upon it to acquire the suit land failing which the reservation would stand vacated. Despite the notice, no steps were taken for acquisition and therefore, according to the respondent, the reservation had lapsed. He therefore filed the suit restraining the petitioner from taking possession of the suit land. The petitioner contested the suit and also raised the preliminary issue regarding the jurisdiction. On the preliminary issue, the trial court held that it had the jurisdiction to entertain and try the suit. That order is impugned in this appeal.

4. Learned counsel for the petitioner submitted that under section 53 of the Maharshtra Regional and Town Planning Act, (for short 'the MRTP Act"), notice was issued to the respondent on 19th February 1990 and therefore the present suit was not maintainable. I fail to see how the issuance of a notice u/s.53 of the MRTP Act would bar the jurisdiction of the civil court

regarding the present suit. The respondent has claimed that despite notice to acquire the land after 10 years of the reservation, the petitioner did not take steps for acquisition of the land and therefore, the reservation had lapsed. He therefore claimed that he should not be dispossessed of the suit land. Assuming the contention of the petitioner that the reservation continues and has not lapsed to be true, it cannot be disputed that petitioner cannot dispossess the respondent except by due process of law. Though the respondent claims an absolute injunction the court may restrict the injunction not to dispossess him except by due process of law. Such a suit would obviously not barred by any law.

5. In this view of the matter, it cannot be said that court had no jurisdiction even to grant an injunction not to dispossess the respondent except by due process of law. It cannot be said that court had no jurisdiction at all to entertain and try the suit.

6. For these reasons, there is no merit in the revision application which is hereby dismissed.

(D.G. KARNIK, J)